

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

**NAYLOR MEDICAL SALES & RENTALS, INC.,
and JERRY ALLEN UNDERWOOD,**

Plaintiffs/Counter-Defendants,

v.

No. 2:09-cv-02344

**INVACARE CONTINUING CARE, INC., f/k/a
HEALTHTECH PRODUCTS, INC., and INVACARE
CORPORATION,**

Defendants/Counter-Plaintiffs.

**ORDER GRANTING AMENDED MOTION TO AMEND COMPLAINT
AND FINDING AS MOOT MOTION TO AMEND COMPLAINT**

Before the Court are Plaintiffs' Motion to Amend Complaint (D.E. #25) and Plaintiffs' Amended Motion to Amend Complaint (D.E. #31). Plaintiffs filed the initial Motion to Amend Complaint on March 1, 2010. However, Plaintiffs filed the Amended Motion to Amend Complaint on March 15, 2010 stating that the "Amended Complaint attached to the original Motion to Amend did not properly calculate the damages claimed." The instant motions were referred to United States Magistrate Judge Charmiane G. Claxton for determination (D.E. #27, #34).

On March 18, 2010, Defendants filed a response to Plaintiffs' Motion to Amend and Amended Motion to Amend. In the Response, Defendants stated that they did not oppose the relief sought in the motions even though the motions would be "counterproductive to the mediation"¹ and

¹ The Court notes that the parties informed the Court in the April 6, 2010 Joint Motion to Amend the Scheduling Order (D.E. #36) that "mediation between the parties, which occurred on March 25, 2010, did not result in a settlement of this matter." Accordingly, the impact of the Motion to Amend and Amended Motion to Amend is

are past the October 14, 2009 deadline for amending pleadings. Despite these stated arguments, because Defendants explicitly do not oppose the relief sought by Plaintiffs, the Court finds that Plaintiffs' Amended Motion to Amend (D.E. #31) shall be GRANTED and Plaintiffs' Motion to Amend (D.E. #25) shall be found as MOOT.

IT IS SO ORDERED this 7th day of May, 2010.

s/ Charmiane G. Claxton
CHARMIANE G. CLAXTON
UNITED STATES MAGISTRATE JUDGE

now moot.